

Short Title: Partition Sale/Clarify Number of Comm'rs.

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A COURT IS NOT REQUIRED TO APPOINT MORE THAN
ONE COMMISSIONER IN A PARTITION SALE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-28 reads as rewritten:

"§ 46-28. Sale procedure.

(a) The procedure for a partition sale ~~shall be~~ is the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided ~~herein~~ in this section. In a partition sale, the court is not required to appoint more than one commissioner.

(b) The ~~commissioners~~ commissioner shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The ~~commissioners~~ commissioner shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the ~~commissioners~~ commissioner that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section ~~shall satisfy~~ satisfies the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the

undivided interest the cotenant already owns ~~therein~~ in the real property and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of ~~such~~ those cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the ~~share(s)~~ share of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the ~~share(s)~~ share of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

[Staff Note: This section originally replaced "including, but not limited to" with "including"; this draft has removed that change.]

SECTION 2. G.S. 46-44 reads as rewritten:

"§ 46-44. Sale of personal property on partition.

If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, the court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. In a partition sale, the court is not required to appoint more than one commissioner."

[Staff Note: This draft adds Section 2, which extends Section 1's amendment allowing a court to appoint only one commissioner in a partition sale to partition sales of personal property.]

1 **SECTION 3.** This act is effective when it becomes law and applies to partition
2 proceedings commenced before, on, or after that date.